

---

---

**Introduced by Senator Burton**

January 11, 2001

---

---

An act to amend Section 1405 of the Penal Code, relating to forensic testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 83, as introduced, Burton. Forensic testing: post conviction.

Existing law grants a defendant who was convicted of a felony and is currently serving a term of imprisonment the right to make a written motion under specified conditions for the performance of forensic DNA testing.

This bill would make technical, nonsubstantive changes to the law regarding forensic DNA testing.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1405 of the Penal Code is amended to  
2 read:

3 1405. (a) A person who was convicted of a felony and is  
4 currently serving a term of imprisonment may make a written  
5 motion before the trial court that entered the judgment of  
6 conviction in his or her case, for performance of forensic  
7 deoxyribonucleic acid (DNA) testing.

8 (1) The motion shall be verified by the convicted person under  
9 penalty of perjury and shall do all of the following:

10 (A) Explain why the identity of the perpetrator was, or should  
11 have been, a significant issue in the case.

1 (B) Explain in light of all the evidence, how the requested DNA  
2 testing would raise a reasonable probability that the convicted  
3 person's verdict or sentence would be more favorable if the results  
4 of DNA testing had been available at the time of conviction.

5 (C) Make every reasonable attempt to identify both the  
6 evidence that should be tested and the specific type of DNA testing  
7 sought.

8 (2) Notice of the motion shall be served on the Attorney  
9 General, the district attorney in the county of conviction, and, if  
10 known, the governmental agency or laboratory holding the  
11 evidence sought to be tested. Responses, if any, shall be filed  
12 within 60 days of the date on which the Attorney General and the  
13 district attorney are served with the motion, unless a continuance  
14 is granted.

15 (3) If any DNA or other biological evidence testing was  
16 conducted previously by either the prosecution or defense, the  
17 results of that testing shall be revealed in the motion for testing, if  
18 known. If evidence was subjected to DNA or other forensic testing  
19 previously by either the prosecution or defense, the court shall  
20 order the prosecution or defense to provide all parties and the court  
21 with access to the laboratory reports, underlying data, and  
22 laboratory notes prepared in connection with the DNA testing.

23 (b) The court, in its discretion, may order a hearing on the  
24 motion. The motion shall be heard by the judge who conducted the  
25 trial unless the presiding judge determines that judge is  
26 unavailable. Upon request of either party, the court may order, in  
27 the interest of justice, that the convicted person be present at the  
28 hearing of the motion.

29 (c) The court shall appoint counsel for the convicted person  
30 who brings a motion under this section if that person is indigent.

31 (d) The court shall grant the motion for DNA testing if it  
32 determines all of the following have been established:

33 (1) The evidence to be tested is available and in a condition that  
34 would permit the DNA testing that is requested in the motion.

35 (2) The evidence to be tested has been subject to a chain of  
36 custody sufficient to establish it has not been substituted, tampered  
37 with, replaced or altered in any material aspect.

38 (3) The identity of the perpetrator of the crime was, or should  
39 have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.

(6) The evidence sought to be tested meets either of the following conditions:

(A) ~~The evidence~~ was not tested previously.

(B) ~~The evidence~~ was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(e) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. The testing shall be conducted by a laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

(f) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(g) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any

1 additional testing to be conducted by the district attorney or  
2 Attorney General shall not be borne by the convicted person.

3 (2) In order to pay the state's share of any testing costs, the  
4 laboratory designated in subdivision (e) shall present its bill for  
5 services to the superior court for approval and payment. It is the  
6 intent of the Legislature to appropriate funds for this purpose in the  
7 2000–01 Budget Act.

8 (h) An order granting or denying a motion for DNA testing  
9 under this section shall not be appealable, and shall be subject to  
10 review only through petition for writ of mandate or prohibition  
11 filed by the person seeking DNA testing, the district attorney, or  
12 the Attorney General. Any such petition shall be filed within 20  
13 days after the court's order granting or denying the motion for  
14 DNA testing. In a noncapital case, the petition for writ of mandate  
15 or prohibition shall be filed in the court of appeals. In a capital case,  
16 the petition shall be filed in the California Supreme Court. The  
17 court of appeals or California Supreme Court shall expedite its  
18 review of a petition for writ of mandate or prohibition filed under  
19 this subdivision.

20 (i) DNA testing ordered by the court pursuant to this section  
21 shall be done as soon as practicable. However, if the court finds  
22 that a miscarriage of justice will otherwise occur and that it is  
23 necessary in the interests of justice to give priority to the DNA  
24 testing, a DNA laboratory shall be required to give priority to the  
25 DNA testing ordered pursuant to this section over the laboratory's  
26 other pending casework.

27 (j) DNA profile information from biological samples taken  
28 from a convicted person pursuant to a motion for postconviction  
29 DNA testing is exempt from any law requiring disclosure of  
30 information to the public.

31 (k) The provisions of this section are severable. If any  
32 provision of this section or its application is held invalid, that  
33 invalidity shall not affect other provisions or applications that can  
34 be given effect without the invalid provision or application.

